

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2139 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

RAMKRISHNA INDUSTRIAL COOP. SERVICE SOC.

Versus

ULC TRIBUNAL

Appearance:

Shri M.K.Majmudar, Advocate, for Shri P.B.
Majmudar, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at

Surat (respondent No.2 herein) on 8th March 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.1 herein) on 29th December 1987 in Appeal No.Surat-601 of 1984 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 14,522 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner held one parcel of land bearing survey No.213 in all admeasuring 16022 square metres situated at Udhana within the urban agglomeration of Surat (the disputed land for convenience) on the date of coming into force of the Act. It therefore filed its declaration in the prescribed form under section 6 (1) thereof. It was duly processed by respondent No.2. After observing necessary formalities under section 8 thereof, by his order passed on 8th March 1984 under section 8 (4) thereof, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 14522 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.1 under section 33 of the Act. It came to be registered as Appeal no.Surat-601 of 1984. By the order passed on 29th December 1987 in the aforesaid appeal, respondent No.1 dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. It transpires from the record that the petitioner is an industrial co-operative service society registered under the Gujarat Co-operative Societies Act, 1961. It appears that it has raised in all 118 industrial units on the disputed land. It transpires from the material on record that the construction activity was undertaken without obtaining what is popularly known as the N.A.Permission and even without obtaining any building permission from the concerned local authority. It however transpires from the material on record that later on the N.A.Permission was granted on payment of fine for its unauthorised non-agricultural use from 1975-76. It also transpires from the material on record that the construction raised on the disputed land was regularised

by the concerned local authority after imposition of a suitable penalty on the petitioner. It cannot be gainsaid that regularisation of the non-agricultural use of a parcel of land would relate back to the date of its unauthorised non-agricultural use. Similarly, regularisation of unauthorised construction would have relation back to the date of coming into existence of such construction. It thus becomes clear that, though the construction of industrial sheds or units in the disputed land was unauthorised at the time it was undertaken, it was regularised by imposition of suitable penalty on the petitioner and, in that view of the matter, such construction became authorised from the date of its coming into existence. The view taken by the authorities below that, despite such regularisation, the construction was unauthorised on the date of coming into force of the Act cannot be sustained in law. Acceptance of that view would amount to nullifying the effect of regularisation by imposition of fine or penalty for the purpose. I am therefore of the opinion that the view taken by the authorities below regarding unauthorised existence of the construction on the date of coming into force of the Act cannot be sustained in law.

4. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition cannot be sustained in law. It however does not become clear from the material on record as to what was the constructed area in the disputed land on the date of coming into force of the Act. The constructed area for the purpose would obviously include the building under construction in view of the definition of 'vacant land' contained in section 2 (q) of the Act. The matter will have therefore to be remanded to respondent No.2 for ascertaining the existence of the constructed area as also the area under construction on the date of coming into force of the Act. It is clarified that, if industrial sheds or units are separately constructed, each such shed or unit would be entitled to separate land appurtenant thereto for the purpose of its exclusion from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 8th March 1984 under section 8 (4) of the Act at Annexure-A to this petition as affirmed in appeal by the order passed by the Urban Land

Tribunal at Ahmedabad on 29th December 1987 in Appeal No.Surat-601 of 1984 at Annexure-B to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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